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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, ET AL.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 19, 2012

11:30 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(Doc no. 61, 188) Notice of Continued Evidentiary Hearing RE:
Debtors' Motion Pursuant to 11 U.S.C. Sections 105, 363(b),
(f), and (m), 365 and 1123 and Fed. R. Bankr. P. 2002, 6004,
6006, and 9014 For Order: (A)(I) Authorizing and Approving Sale
Procedures, Including Break-Up Fee and Expense Reimbursement;
(II) Scheduling Bid Deadline and Sale Hearing; (III) Approving
Form and Manner of Notice Thereof; and (IV) Granting Related
Relief and (B)(I) Authorizing the Sale of Certain Assets Free
and Clear of Liens, Claims, Encumbrances, and Other Interests;
(II) Authorizing and Approving Asset Purchase Agreements
Thereeto; (III) Approving the Assumption and Assignment of
Certain Executory Contracts and Unexpired Leases Related
Thereeto; and (IV) Granting Related Relief filed by Lorenzo
Marinuzzi on behalf of Residential Capital, LLC.

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P R O C E E D I N G S

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THE COURT: Please be seated. All right, we're here
on Residential Capital, LLC, number 12-12020.

MR. NASHELSKY: Good morning, Your Honor. Darren
Nashelsky from Morrison & Foerster, proposed counsel for
Residential Capital, the debtors before this Court. We are
back this morning to inform the Court of the results of the
final and best bids we received last night before the 8:40
deadline set by the Court.

Your Honor, the debtors received two bids on the
debtors' platform prior to the 8:40 deadline. We also received
one bid on the whole loan portfolio from Berkshire Hathaway,
which I will describe in a moment.

We received a bid from Berkshire Hathaway on the
debtors' platform. The details of that bid are as follows.
Berkshire Hathaway increased the purchase price of its bid by
one hundred million dollars from the original purchase price
set forth in the Nationstar stalking horse and fifty million
more than the purchase price in Berkshire's APA, that was
Exhibit F yesterday. To keep things apples to apples, I'll
refer to the increase from the original stalking horse. That's
a hundred million dollars.

Berkshire Hathaway kept its breakup fee at twelve
million dollars, which was sixty million lower than the
original stalking-horse APA. Berkshire Hathaway has no expense

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reimbursement and continued to keep the bidding increments at five million dollars.

Berkshire Hathaway -- sorry. We received a bid from Nationstar. The details of that bid are as follows. Nationstar increased the purchase price of its bid by 125 million dollars from the original purchase price set forth in its stalking-horse bid, and 75 million more than the purchase price it submitted during yesterday's proceedings. That 125 million dollar bid is 25 million dollars higher on purchase price than the Berkshire Hathaway final and best.

Nationstar kept its breakup fee at twenty-four million dollars, which was forty-eight million lower than the stalking-horse APA and twelve million higher than the Berkshire Hathaway breakup fee. Nationstar has no expense reimbursement. The bidding increments also remain at five million dollars.

The ResCap board of directors met early this morning to consider the two final and best bids from Berkshire Hathaway and Nationstar on the platform. The entire board was present, Your Honor, and the two bids were described to the board, as well as copies of the e-mails which contained the bids, were provided to the board.

After deliberations regarding the bids, the ResCap board, in the sound exercise of their business judgment, determined that the Nationstar bid for the platform was both higher and better than the Berkshire Hathaway bid. On a gross

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1 basis, the purchase price was twenty-five million dollars
2 higher on the Nationstar bid, and on a net basis, when you
3 include the difference in the breakup fee, the Nationstar bid
4 was thirteen million dollars higher.

5 As to the whole loan portfolio, we also received a bid
6 from Berkshire, the details of which are as follows. Berkshire
7 Hathaway increased the purchase price of its bid for the whole
8 loan portfolio by fifty million dollars from the original
9 purchase price set forth in the AFI stalking-horse APA. That's
10 the same price that Berkshire had in their APA that was entered
11 into evidence as Exhibit G.

12 Berkshire Hathaway kept its breakup fee at ten million
13 dollars, which would be ten million higher than the no breakup
14 fee in the AFI stalking horse. Berkshire Hathaway has no
15 expense reimbursement. And the bidding increments were five
16 million.

17 We compared the Berkshire Hathaway bid for the whole
18 loan portfolio to the original stalking-horse AFI bid. The
19 ResCap board considered the two bids and had copies of the
20 bids. After deliberating, the board, in the exercise of their
21 sound business judgment, determined that the Berkshire Hathaway
22 bid for the whole loan portfolio, was both higher and better
23 than the AFI stalking-horse bid. On a gross basis, the
24 purchase price of the Berkshire Hathaway whole loan portfolio
25 bid was fifty million higher than the AFI bid, and on a net

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1 basis the Berkshire Hathaway bid was forty million dollars
2 higher, if you reduce the fifty million by the ten million
3 breakup fee.

4 I just wanted to note, Your Honor, that although the
5 debtors selected Berkshire Hathaway as the stalking-horse for
6 the whole loan, the debtors do believe that AFI has complied
7 with its obligations under the settlement with ResCap to have
8 been the stalking-horse and that the debtors decided to go with
9 a different stalking horse. And the debtors believe that it
10 was valuable to the estate to have AFI as the stalking-horse to
11 set the floor.

12 It is the debtors' sincere hope that both Berkshire
13 and Nationstar and many other bidders actively participate in
14 the auction for the platform assets. The debtors believe there
15 is sufficient time and a well laid-out process to have a robust
16 auction for these assets. Similarly, the debtors sincerely
17 hope that having clarified the bid and bid process for the
18 whole loan portfolio, with no connection to a plan or a
19 settlement in any way, that there will be a robust process for
20 bidding on the whole loan assets.

21 Your Honor, this is an incredibly complex financial
22 services company in a highly regulated industry, and we believe
23 that the bidding process is very important to enable bidders to
24 be at a place to make a successful bid and obtain the approvals
25 necessary to consummate these transactions. And we felt it

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1 important to note that the process leading up to today was not
2 a court-approved auction, it was a process to obtain the
3 approval of sale procedures and the stalking-horse protections.

4 An order, hopefully, will be entered today or tomorrow
5 that will officially start the bankruptcy court process, and we
6 want potential bidders to know that there will be an auction
7 and they need to attend, and that that process will follow the
8 sale procedures Your Honor approves.

9 With that said, Your Honor, the debtors believe the
10 evidence has shown that they exercised their sound business
11 judgment in selecting and continuing with Nationstar as the
12 stalking horse for the origination servicing platform, as I
13 described, and that they exercised their sound business
14 judgment in selecting Berkshire Hathaway as a stalking-horse
15 bidder for the whole loan portfolio. Unless Your Honor has any
16 questions?

17 THE COURT: I will. But let me hear from others
18 first. Mr. Eckstein?

19 MR. ECKSTEIN: Your Honor, good morning. Kenneth
20 Eckstein of Kramer Levin, proposed counsel for the unsecured
21 creditors' committee. Consistent with Your Honor's directions
22 at the conclusion of yesterday's hearing, we also received the
23 bids described by Mr. Nashelsky, both from Nationstar and
24 Berkshire. Those bids were forwarded last night to the members
25 of the unsecured creditors' committee with a summary prepared

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1 by our financial advisor, Moelis.

2 The committee met this morning. Each member of the
3 committee participated in a comprehensive conference call
4 discussing the issues that arose at yesterday's hearing
5 describing the testimony, describing some of the nonfinancial
6 issues surrounding the transactions, including diligence, GSEs,
7 and other important items. And after discussing all of the
8 issues and the bids, the committee arrived at the same
9 conclusion arrived at by the debtor.

10 The committee determined that the Nationstar bid, with
11 an increase of 125 million dollars, was in the best interests
12 of the estate. And notwithstanding a higher break fee, the
13 committee felt that it was advantageous to, at this point in
14 the process, lock in the highest price for the assets.
15 Obviously, it's quite hopeful that Berkshire will participate
16 in the auction, and believes (sic) that both of these bidders
17 are extremely attractive bidders to consummate a transaction
18 for the estate.

19 With respect to the HFS assets, we determined, as I'd
20 indicated yesterday, preliminarily, that locking in an
21 additional fifty million dollars was in the best interests of
22 the estate, and that a ten million dollar break fee was
23 appropriate compensation for that additional floor. And
24 therefore the committee endorses Berkshire as the stalking
25 horse for the HFS assets in lieu of AFI.

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1 So we share Mr. Nashelsky's view that at this point in
2 time, with the other modifications that have been negotiated
3 and have been described in the record, and that I believe are
4 the subject of agreement, that we have a set of procedures in
5 place that should be designed to maximize bidding on both of
6 these assets with adequate time and with a level playing field.

7 We understand that the asset purchase agreements for
8 both of the transactions are being revised to reflect both the
9 financial changes and the other procedural changes. And we're
10 obviously going to be interested in making sure that the
11 revised APAs reflect all of the understandings. But with that,
12 we are in agreement with the recommendation that the debtor has
13 articulated, and we would be supportive of the entry of an
14 order consistent with those recommendations.

15 THE COURT: Thank you, Mr. Eckstein. Anyone else want
16 to be heard? Mr. Walper?

17 MR. WALPER: Thank you, Your Honor. Thomas Walper,
18 Munger, Tolles & Olson, representing Berkshire Hathaway. I
19 just want to thank the Court yesterday for the opportunity to
20 present evidence and to display, I think, what the parties-in-
21 interest in this case will believe has been a valuable process
22 to the unsecured creditors in particular, but also to the
23 estates generally. So thank you very much, Your Honor.

24 THE COURT: Thank you, Mr. Walper.

25 Mr. Nashelsky -- anybody else want to be heard? I

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1 have a couple of questions --

2 MR. NASHELSKY: Sure, Your Honor.

3 THE COURT: -- really going to the APA. When I spent
4 some time going over the actual document in more detail, I
5 don't find a fiduciary out. And the testimony and the colloquy
6 yesterday -- testimony referred to a nonsolicitation provision,
7 and then Nationstar's counsel, at the very end, made a couple
8 of comments suggesting it was much more than just a
9 nonsolicitation provision. He then said he had no objection to
10 the debtor communicating with Berkshire about an improved bid.

11 But when I went back over the APA itself, it raised a
12 question whether the absence -- unless, did I miss something?
13 Is there a fiduciary out? I don't see it there.

14 MR. NASHELSKY: Are you referring to going forward,
15 whether the debtors --

16 THE COURT: Well, whether it's -- if I approve the
17 bidding procedures, this APA gets signed. I understand what
18 the bidding procedures do and what it does with regard to the
19 auction. But I don't know whether there could be other
20 circumstances that arise that would permit a debtor to trigger
21 the usual form of fiduciary out. I became concerned, and I'm
22 sorry I didn't pick this up yesterday, because I would have --
23 you would have heard plenty from me; because of the form of
24 that nonsolicitation clause, I guess it's in paragraph 7.1,
25 "Competing transaction" -- the form of that paragraph is --

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1 MR. NASHELSKY: That --

2 THE COURT: -- inconsistent with what I have always
3 viewed the fiduciary obligations of a debtor to be. You could
4 argue that in light of how events have unfolded, specifically
5 the fact that there was additional dialog last night, there
6 were competing offers put on the table, Nationstar is
7 ultimately successful at achieving its stalking-horse status,
8 and I certainly do hope that there'll be continued bidding --
9 but I found the language in the APA really quite questionable.

10 And since the APA is going to be revised, I believe
11 that a -- unless I missed it; and my clerks looked and I looked
12 this morning -- I didn't see the usual fiduciary out provision
13 that would -- gee, I would have thought would be --
14 automatically would have been drafted into the agreement. And
15 this wasn't just a no-shop clause. This was a no negotiate;
16 don't provide information; this was a rather extraordinary
17 provision that you agreed to.

18 MR. NASHELSKY: Your Honor, I think under the
19 circumstances, with the --

20 THE COURT: You should have called it to my attention,
21 too. Because this -- you refer to it as a nonsolicita -- this
22 is more than a nonsolicitation clause.

23 MR. NASHELSKY: Well, my apologies, Your Honor, if I
24 didn't direct your attention to it. Our view was that needing
25 to lock in a stalking horse, and the stalking horse being

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1 concerned that if it has spent the time and money that it
2 spent, that at least up until the opportunity to have the
3 stalking horse approved, that we should stay with that stalking
4 horse. I think our view is there's always a fiduciary out for
5 the estate, Your Honor.

6 THE COURT: Where is that? Show it to me.

7 MR. NASHELSKY: No, I think it's inherent in the
8 bankruptcy --

9 THE COURT: It's in the air?

10 MR. NASHELSKY: -- well. It's in the law that the
11 debtor has to do what's in the best interests of the estate.
12 But this was -- this provision now is -- goes away, because it
13 goes away when a sale procedure order is enter, presuming Your
14 Honor will enter an order.

15 We -- look, we tried to get it to be softened. But
16 there are situations, Your Honor, where our choices are
17 limited. And I would have liked to have had other
18 opportunities, but I also needed a stalking horse to get a DIP,
19 to have a soft landing, to preserve value. And the debtors
20 believed that given those --

21 THE COURT: Let me ask you this. Do you agree this is
22 more than just a nonsolicitation clause?

23 MR. NASHELSKY: Yes, I --

24 THE COURT: Your witness, Mr. Greene, referred to it
25 as a nonsolicitation provision. It's not.

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1 MR. NASHELSKY: It's not. Right, it's --

2 THE COURT: It's that plus a whole lot more.

3 MR. NASHELSKY: It's a non-negotiation provision, Your
4 Honor. Nonsolicit and non-negotiation.

5 THE COURT: I want it changed. Okay?

6 MR. NASHELSKY: Can I have one moment, Your Honor?

7 THE COURT: Yes.

8 MR. NYHAN: Your Honor, just to be clear --

9 THE COURT: Just identify yourself for the record.

10 MR. NYHAN: I beg your pardon, Your Honor. Larry
11 Nyhan, Sidley & Austin on behalf of Nationstar. Your
12 characterization is right, Your Honor. It's a no-shop
13 provision. But it only extends to the point --

14 THE COURT: It's more than a no-shop provision. I
15 understand a no-shop provision that the debtor couldn't go out,
16 take your bid, and go out and try and shop it elsewhere. But
17 when Berkshire -- that's different than what happens when
18 Berkshire contacts the debtor and puts an offer on the table,
19 what they can or can't do in responding to it. That's the part
20 that I'm bothered by.

21 When I heard the testimony yesterday, I kicked myself
22 that I didn't open up the APA to look specifically -- it was
23 referred to as a no solicitation. It became a non-issue at the
24 and of the day when you indicated -- you said well, it's more
25 than nonsolicitation, but you said, but we have no objection. I

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1 didn't realize quite what was in this agreement. Somebody
2 should have flagged this. I wouldn't expect you to do it, but
3 I would have expected debtors' counsel or the committee's
4 counsel to have said the debtors' hands are tied in dealing
5 with Berkshire.

6 Could there have been a robust dialog with Berkshire
7 before last night about what its offer was -- I understand they
8 didn't come to the process until late in the day, but they did
9 come. And maybe this is -- I'm venting a little bit, when it
10 doesn't make a whole lot of difference now as events have
11 unfolded. I'm quite pleased that Nationstar has upped its
12 offer. It is clear to me I'm going to approve it -- approve
13 them as the stalking horse. I am going to require that a
14 specific fiduciary out provision be put in, because I don't
15 have -- I can't anticipate all the events that will unfold
16 going forward.

17 Certainly the bidding procedures will go forward. The
18 bidding procedures order will govern. But the board's
19 fiduciary duty is probably somewhat broader than that. And I
20 don't think I've ever approved an APA that doesn't have the
21 typical fiduciary out provision in it. So I'm surprised, Mr.
22 Nashelsky that you agreed and didn't flag for me, particularly
23 when your witness who testified yesterday referred to it as
24 nonsolicitation. Maybe that's the simple euphemism you prefer
25 to call it. But this is much more.

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1 I understand what a nonsolicitation provision is. I
2 understand what a no-shop provision is. If someone said, well,
3 there's a no-negotiation provision. We couldn't provide them
4 with information when Berkshire came forward, this is a lot
5 more than that.

6 MR. NYHAN: Your Honor, to the extent it is helpful,
7 I'm prepared to confirm the representation of Mr. Nashelsky
8 that our interpretation of this agreement is that the
9 limitation on discussions, the no-shop, however one wishes to
10 characterize it, set forth in section 7.1, is extinguished once
11 the bidding procedures order is entered. And the debtor is
12 free to do whatever it can to generate -- consistent with the
13 bid procedures -- to generate interest in the auction.

14 I will say, Your Honor, that we have had purchase
15 agreements with debtors that do not have fiduciary duty outs,
16 on the basis that the board has the facts in front of them; the
17 board has concluded its going to pursue a sale process --

18 THE COURT: You've never had me approve one of those.

19 MR. NYHAN: I appreciate that, Your Honor. I
20 appreciate that. And if Your Honor is telling me that Your
21 Honor is not going to approve this without a fiduciary duty
22 out, I would request an opportunity to speak to my client.

23 THE COURT: Go speak to your client.

24 MR. NYHAN: Thank you.

25 THE COURT: Are they here?

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1 MR. NYHAN: Yes.

2 THE COURT: Go ahead.

3 MR. NYHAN: It was a short conversation, Your Honor.

4 The client is prepared to accept that.

5 THE COURT: Okay.

6 MR. NASHELSKY: So my apologies, Your Honor, for not
7 flagging that. And we should have been more clear on it. And
8 we apologize. And we will add a fiduciary out, as Nationstar
9 just agreed.

10 THE COURT: Okay. All right. Does anybody else want
11 to be heard at this point?

12 All right. Pending before the Court is the debtors'
13 motion pursuant to Sections 105, 363(b), (f), (m), 365, 1123,
14 Federal Rule of Bankruptcy Procedure 2002, 6004, 6006, and 9014
15 for an order authorizing and approving sales procedures
16 including breakup fee and expense reimbursements, scheduling
17 bid deadline and sale hearing, approving form and manner of
18 notice thereof, and granting related relief. I won't go on.
19 But it's the full title of the motion.

20 And through the motion, at this time, the debtors seek
21 approval of certain bid procedures and proposed stalking-horse
22 bidders for both what's been referred to as the servicing
23 platform and the legacy loan portfolio.

24 A number of parties objected to the bid procedures and
25 the debtors' proposed stalking-horse bidder for the loan

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1 servicing platform. Yesterday the Court held a hearing on the
2 motion, and in support of the motion heard testimony from
3 Samuel M. Greene, from Centerview Partners LLC, the debtors'
4 investment banker, and James Whitlinger, the debtors' chief
5 financial order. In support of Berkshire Hathaway's objection
6 to the motion, the Court heard testimony from R. Ted Weschler,
7 an investment manager at Berkshire Hathaway.

8 Upon conclusion of the testimony, the Court directed
9 that Nationstar, Berkshire Hathaway, and the debtors' parent,
10 Ally Financial, submit their best and final offers to serve as
11 stalking-horse bidders to the debtors and the creditors'
12 committee, by 8:40 p.m. on June 18th. Upon receipt of those
13 offers, the debtors' board of directors was directed to meet
14 and determine which party would act as stalking-horse bidder
15 for the proposed sale of the debtors' assets, which are more
16 fully set forth in the motion. The creditors' committee,
17 likewise, was directed to meet and provide its recommendation
18 with respect to the stalking-horse bidders.

19 Both of those have occurred. Counsel for both the
20 debtor and for the committee have reported on the directors'
21 committee meeting for the debtors and the creditors' committee
22 meeting.

23 The debtors' board of directors, in the exercise of
24 its business judgment, determined to go forward with the
25 Nationstar offer, as both quantitatively and qualitatively

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1 better for the debtors' servicing business. The terms have
2 been put forth on the record and will be set forth in the
3 written bidding procedures order and revised APA.

4 The debtors' board of directors concluded to go ahead
5 with Berkshire Hathaway as the stalking-horse bidder for the
6 loan portfolio, concluding that its bid was quantitatively
7 superior to the AFI proposal that had been made.

8 With respect to the servicing platform, the evidence
9 yesterday demonstrated that Nationstar as a stalking horse,
10 appears to have the ability quickly to consummate the sale,
11 obtain the necessary approvals, obviously, which consent from
12 the GSEs are required. That's not done, but it appears that
13 they already had meetings with the GSEs. That process is
14 underway. Certainly the Court hopes that any competing
15 bidders, Berkshire Hathaway, for example, will likewise be in a
16 position to obtain the necessary approvals. It certainly
17 appears to be a first-rate bidder for these assets. The Court
18 certainly hopes they continue in the process going forward.

19 The debtors have shown this morning that the Berkshire
20 Hathaway bid for the loan portfolio is the superior bid. It
21 was clear yesterday there were no consents that are required
22 for that sale to take place. And the Court is hopeful that
23 continued bidding will occur during the auction process for the
24 loan portfolio.

25 With respect to both portions of the business, the

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1 amounts of the breakup fees are reasonable in the context of
2 the amounts being offered and will not impede active bidding.

3 In the context of Section 363 auctions, bankruptcy
4 courts must have broad discretion and flexibility to enhance
5 the value of the estates before it. See *In re Financial News*
6 *Network Inc.*, 980 F.2d 165, 169 (2d Cir. 1992). The Court must
7 not substitute its business judgment for that of the debtors.
8 See *Committee of Equity Security Holders v. Lionel Corp.*, *In re*
9 *Lionel Corp.* 722 F.2d 1063, 1071 (2d Cir. 1983).

10 The Court is mindful that, "The fiduciary obligations
11 of debtors pervade bankruptcy administration." *In re Bidermann*
12 *Industries USA, Inc.*, 203 B.R. 547, 551 (Bankr. S.D.N.Y. 1997).
13 It is the overarching objective of sales in bankruptcy to
14 maximize value to the estate. See *Official Committee of*
15 *Subordinated Bondholders v. Integrated Resources, Inc.*, *In re*
16 *Integrated Resource, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992),
17 ("It is a well-established principle of bankruptcy law that the
18 objective of bankruptcy rules and the debtor's duty with
19 respect to such sales, is to obtain the highest price or
20 greatest overall benefit possible for the estate.")

21 As this Court found in *In re Metaldyne Corp.*, 409 B.R.
22 661, 669 (Bankr. S.D.N.Y. 2009), there is little doubt that
23 deciding to enter into a stalking-horse asset purchase
24 agreement, as is occurring here, is a reasonable exercise of
25 the debtors' business judgment, consistent with the debtors'

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1 fiduciary obligations to their creditors, and consistent with
2 the overall objective of maximizing value to the estate.

3 With the changes that will be made to the two
4 respective asset purchase agreements and bidding procedures
5 order, to reflect the changes that were agreed upon yesterday,
6 and the additional one which I raised this morning, the Court
7 is satisfied that the board's decision to enter into these
8 asset purchase agreements reflects an appropriate business
9 judgment by a disinterested board of directors.

10 The evidence has shown that with respect to the loan
11 servicing platform, the Nationstar bid is the superior bid,
12 both quantitatively and qualitatively, and appropriate for the
13 board to agree to enter into that agreement. With respect to
14 the loan portfolio, the evidence has established that the
15 Berkshire bid is a superior bid, quantitatively, and
16 appropriate exercise of business judgment by the debtors' board
17 to enter into that stalking-horse contract.

18 Bidder protections are granted when a bidder provides
19 a floor for bidding, by expanding resources to conduct due
20 diligence, and allowing its bid to be shopped around for a
21 higher offer; Integrated Resources, 147 B.R. 659. The Court in
22 integrated Resources adopted a three-part test for evaluating
23 breakup fees: 1) is the relationship of the parties who
24 negotiated the breakup fee tainted by self-dealing or
25 manipulation; 2) does the fee hamper rather than encourage

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bidding; and 3) is the amount of the fee unreasonable relative to the proposed purchase price. That's 147 B.R. 657.

An analysis of each of these factors, in this case, supports the proposed bid protections and the breakup fee that are being granted in this case.

In light of the considerations that I've discussed, the Court finds that the bid procedures are fair and adequate and will likely enhance the auction of the debtors' assets. Further, the Court is confident that the debtors' board of directors has exercised its valid business judgment in choosing the stalking-horse bidders for the loan servicing platform and for the loan portfolio.

And as I've said before, it's certainly the Court's hope that the bidders who've been involved in the selection of the stalking horse will remain active bidders in the auction.

As I've already indicated, the Court will require that the asset purchase agreements be revised to include a fiduciary out provision which was not included in the APA as presented to the Court.

As events unfolded yester -- and while paragraph 7.1 of the Nationstar APA arguably would have prevented the debtors from engaging with Berkshire with respect to its improved offers, as events unfolded yesterday, the effect of paragraph 7.1 became of little consequence, because Nationstar's counsel stated on the record that it consented to the debtors'

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1 communications with Berkshire Hathaway regarding any further
2 revised offer. Therefore, I consider this in the context of
3 this case to have been a no-harm no-foul situation.

4 For all of the foregoing reasons, the Court approves
5 the debtors' motion to enter into -- for approval of bidding
6 procedures as revised, subject to the Court seeing the final
7 orders, and entering into the asset purchase agreements, with
8 the changes that were discussed yesterday and this morning.

9 Mr. Nashelsky?

10 MR. NASHELSKY: Thank you, Your Honor. We'll be,
11 obviously, providing the parties with drafts of the order to
12 make sure all of the language we agreed --

13 THE COURT: Tell me, where do things stand? Because
14 there were a bunch of provisions that were agreed upon
15 yesterday, a number of reservation of rights, and things of
16 that nature.

17 MR. NASHELSKY: Right. So I believe that we have
18 agreement with the RMBS trustees and -- sorry -- Frost Bank,
19 thank you -- on reserving rights on the cure procedures. We
20 have reservation rights with U.S. Bank on the waiver of credit
21 bidding. And we have -- we will work in language with the U.S.
22 Trustee on the ombudsman issue, which will be for another day.
23 And we're reserving rights of Digital Lewisville, which was the
24 other objector.

25 I believe with those changes and all the other changes

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1 Your Honor described, we agree with the committee on timing and
2 otherwise, that everybody is on board, and we will obviously
3 confirm with each of them the language that we put in the order
4 that affects their rights.

5 THE COURT: When is the -- with respect to the
6 consumer privacy ombudsman, the July 10th calendar is already
7 quite full. What's the next date after that?

8 MR. NASHELSKY: The 24th, Your Honor.

9 THE COURT: My suggestion is, talk with Mr. Masumoto
10 and -- is all the briefing completed with respect to the
11 consumer privacy ombudsman?

12 MR. MASUMOTO: Yes, it is, Your Honor.

13 MR. NASHELSKY: I think, Your Honor, yes. We would
14 like to spend some time on them and just see if we can
15 explain --

16 THE COURT: See if you can work it out.

17 MR. NASHELSKY: Yes -- what we were doing, and why we
18 think so. If we still need to have it heard, we could, Your
19 Honor.

20 THE COURT: So my suggestion is, if that date -- if
21 the July 24th date would work for you, I guess to put it on the
22 calendar for then. If you believe you need an earlier
23 determination of the issue, which is fine if you do, we can
24 specially set a date just to deal with the consumer privacy
25 ombudsman.

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1 MR. NASHELSKY: No, I think that date should be fine,
2 Your Honor.

3 THE COURT: Okay. All right. Anything else for
4 today?

5 MR. NASHELSKY: No, I think we're done. And thank you
6 very much for staying late last night and accommodating us.

7 THE COURT: That's okay. I want to commend everybody
8 for moving the process along to this point. And obviously you
9 had fairly robust bidding that raised the stalking-horse price
10 considerably for both sets of assets.

11 MR. NASHELSKY: Thank you, Your Honor.

12 THE COURT: Thank you very much. We're adjourned.

13 (Whereupon these proceedings were concluded at 12:04 PM)
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I N D E X

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is granted as revised based on the record.		

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: June 20, 2012

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